Petition

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In the Supreme Court of the United States

October Term, 1981

WILLIAM ARCHIE WILLIAMS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the giving of an instruction to the jury in a criminal action that it could "reject" the defendant's testimony solely on the basis that it felt his interest in the outcome of the prosecution was "sufficient to affect" his credibility constitutes reversible error.

2. Whether the failure to grant a new trial in the face of a post-trial affidavit by a key government witness recanting a crucial part of his trial testimony, when considered along with the trial court's improper charge and improper exclusion of material evidence vital to petitioner's defense, constitutes reversible error.

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RECORD CITATION

This petition is in regard to a denial of the Petitioner's motion for a new trial. Prior to filing this motion, the Petitioner appealed directly from the conviction at trial. The record of the first direct appeal is incorporated in the record of this second appeal. Both records are cited as they were numbered for the appeals to the Fifth Circuit Court of Appeals. The relevant portions of the Record which are cited in this petition are as follows:

Trial transcript (Vol. I) is cited as R, III, pp. 77-407.

Proffer of testimony transcript (Vol. II, Supplemental Record on Appeal No. 80-3064) is cited as SR, I, pp. 1-31.

The indictments and various pre-trial orders and motions (which are Vol. I of the Record on Appeal No. 80-3064) are cited as R, I.

Documentary exhibits of the Petitioner (excluded from evidence on Appeal No. 80-3064) are cited as D.Ex. 1-22 (excluded from evidence).

Motion for new trial and related briefs and pleadings (which are part of the Record on Appeal No. 80-3969)are cited as R, II.

No.

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WILLIAM ARCHIE WILLIAMS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioner, William Archie Williams, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on June 22, 1981.

CITATION TO OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit in this case is unpublished and will be cited as *United States v. Williams,* No. 80-3969 (5th Cir. 1981). The opinion and the judgment appear in Appendices A and B respectively.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on June 22, 1981. This Petition for a Writ of Certiorari was filed within sixty (60) days of that date, in accordance with Rule 20.1 of the Rules of the Supreme Court of the United States. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

As provided by Supreme Court Rule 21.1(f), the verbatim quotation of the following constitutional provision is set forth in Appendix E hereto:

The Fifth Amendment of the United States Constitution.

STATEMENT OF THE CASE

On October 19, 1979, a three-count superseding indictment was returned against William Archie Williams (hereinafter "Williams"), the petitioner in this matter. Count I of the indictment alleged that Williams had, with intent to injure and defraud, misapplied funds of the Pelican State Bank (hereinafter referred to as "PSB"), in the amount of $58,055.44, in violation of 18 U.S.C. §656. Counts II and III of the indictment alleged similarly that Williams had willfully overvalued "a security" in violation of 18 U.S.C. §1014 by depositing a personal check in his account at PSB (Count II), and a personal check in his account at the Winn State Bank (Count III), then knowing that there were insufficient funds in the accounts at the respective drawee banks to cover the checks.

On December 12, 1979, Williams was convicted on all three counts of the indictment. Williams appealed his conviction to the United States Court of Appeals for the Fifth Circuit (Docket No. 80-3064), and on March 19, 1981, Judge Kunzig, Judge of the United States Court of Claims, sitting by designation, upheld the convictions on all three counts in an opinion cited as *United States v. Williams*, 639 F.2d 1311 (5th Cir. 1981). A timely petition for rehearing and suggestion for rehearing *en banc* were denied on April 17, 1981, and on June 13, 1981, a Petition For Writ Of Certiorari To the United States Court of Appeals for the Fifth Circuit was filed in this Court, and docketed as Supreme Court No. 80-2116.

On July 25, 1980, Williams filed a motion for a new trial in this matter in the district court pursuant to Rule 33, Federal Rules of Criminal Procedure, based upon a post-conviction showing that a key government witness had given false evidence at trial. The witness's recantation was evidenced by a sworn affidavit executed by Ollie L. Stone, Jr. (hereinafter "Stone"), PSB's cashier at all times relevant to this action and one of the government's key witnesses. This affidavit is included herein in Appendix D. On November 17, 1980, the District Court denied the motion for a new trial in a two-paragraph minute entry. A copy of this opinion is attached hereto as Appendix C.

Williams appealed the denial of his motion for a new trial to the United States Court of Appeals for the Fifth Circuit (Docket No. 80-3969), and on June 22, 1981, the Fifth Circuit issued a per curiam opinion, which is the subject of this petition, affirming the denial of the motion for a new trial. *See* Appendix A. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

In this case, Williams was charged with misapplying the funds of PSB and with making a false statement to PSB and to the Winn State Bank. During the course of Williams' trial, the government called Stone, the cashier of PSB, and elicited rebuttal testimony that Williams had not expended personal funds on behalf of PSB, and that at the time of the conduct charged in the indictment PSB owed no monies to Williams.

Williams contended that this testimony was false. In fact, Williams contended that he had extended very large amounts of personal funds to cover legal obligations of PSB, and PSB had accepted said extensions of funds on its behalf. [*See, e.g.*, R, III, pp. 249-250, 252-253, 255-256, 268, 270-271; Supplemental Record ("SR"), I (excluded from evidence)]. PSB was obligated to Williams as a result.

Stone, as cashier of the bank, was well acquainted with the fact that Williams had extended large amounts of personal funds to cover legal obligations of PSB, not only because as cashier of PSB he was intimately familiar with PSB's accounts, but also because he had actually participated in the extensions of funds by Williams on behalf of PSB by executing money orders purchased by Williams with personal funds and mailing them to PSB's obligee with instructions on how the funds were to be applied. [*See, e.g.*, D.Ex. 9 and 21 (excluded from evidence)].

At the time of trial, Williams had no reason to believe that Stone would falsely testify regarding these matters, and he was taken by surprise when Stone did so. At trial, Williams was unable to show Stone's testimony to be false because the District Court erroneously excluded all of Williams' documentary evidence and expert testimony which would have demonstrated that Stone's testi-

mony was false.[1] [*See* SR, I, pp. 2-29; D.Ex. 10-14, 16-22 (all excluded from evidence)].

Under the defenses raised by Williams to the charges of the indictment, Stone's false testimony went to the heart of the issues before the jury. In Count I of the indictment, Williams was charged with misapplying funds of PSB by overdrawing his bank account. Williams sought to show that he had no intent to injure or defraud the bank, an essential element of the offense charged, because, at all times that his account was overdrawn he had a much greater amount of personal funds extended to cover legal obligations of the bank. The personal funds advanced by Williams ($79,678 from December, 1977 to March, 1978) were to cover legal and contractual obligations of PSB, and had been extended through PSB to finance the purchase of certain vehicles by Taylor Motor Company (hereinafter "TMC"). [R, III, pp. 268, 271; SR, I, pages 15-22, and D.Ex. 1014, 18-22 (excluded from evidence)]. Evidence which was probative of Williams' infusion of his personal money into PSB was directly relevant to the defense that he had no intent to injure and defraud the bank.

In his defense of Counts II and III, Williams sought to show that he had been entitled to some $60,000 in proceeds from the sale of TMC as a result of his having extended funds into PSB which were used to finance vehicles purchased by said entity. Williams sought to show that had the $60,000 received from said sale been credited to his account by Stone, PSB's cashier, in accordance with Williams' instructions [R, III, pp. 136, 274-275], the checks,

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1. This exclusion of evidence has been raised in a now pending Petition for Writ of Certiorari as one of the questions presented. *See* Petition For A Writ of Certiorari in the matter of *William Archie Williams v. United States of America* (Supreme Court No. 80-2116).

alleged in Counts II and III to have been "overvalued", would have been covered by funds when presented for payment at the drawee banks. [SR, I, pp. 2-29; D.Ex. 1014, 16-22 (all excluded from evidence)].

Thus, the fact that Williams had extended his personal funds to cover legal obligations of PSB would have shown that he had a reasonable expectation to believe that the checks alleged to have been "overvalued" in Counts II and III, would have been covered when presented for payment because of his entitlement to the $60,000.

Whether Williams had extended his own funds to PSB on behalf of PSB was crucial, on Count I, to Williams' contention that he lacked an intent to injure or defraud PSB, an absolute defense; and was crucial, on Counts II and III, to Williams' contention that he had a reasonable expectation to believe that the checks deposited by him would be covered when presented to the drawee banks for payment, also an absolute defense. Stone's false testimony was to the contrary.

After Williams was convicted, Stone executed an affidavit on behalf of Williams which demonstrates that the testimony given on rebuttal by Stone at trial, to the effect that Williams had not extended personal funds on behalf of PSB and that there was no monetary obligation running from PSB to Williams, was false. On July 25, 1980, Williams moved for a new trial based upon the ground that he had been convicted upon false testimony. The District Court judge denied Williams' motion. *See* Appendix C.

The affidavit, executed by Stone, shows that Stone in fact knew that Williams had extended large amounts of personal funds to cover legal obligations of the bank, and thus was a creditor of the bank, and knew that the bank had accepted the funds so extended. *See* Appendix

D. Thus, the affidavit directly contradicts the testimony of Stone, and others, as given at trial, and at the same time strongly supports the defenses which Williams sought to advance at trial on each of the three counts of the indictment. Ollie Stone falsely testified at trial as follows:

> Question: Mr. Stone, to the best of your recollection, was Mr. Williams ever a creditor of the Pelican Bank? Did the Pelican Bank ever owe Mr. Williams any substantial amounts of money?
>
> Answer: Did the Pelican Bank owe Mr. Williams?
>
> Question: Yes sir.
>
> Answer: No sir, not that I know of.
>
> Question: Was the reverse true?
>
> Answer: Yes sir. [R, III, pp. 364-65].

In his trial testimony Stone stated that he had no reason to believe that Williams had ever been a creditor of PSB. In his sworn affidavit, however, Stone states:

> In the trial of the United States of America v. William Archie Williams, I was asked if I knew how much money was advanced by William Archie Williams to the Pelican State Bank, I answered "No". I knew Mr. Williams had money in an envelope in his box in the vault of the Pelican State Bank and transactions were involved with this money through the Pelican State Bank. [R, II, p. 5].

Stone's affidavit goes on to say that it appeared from bank documents, including documents which Stone as cashier of the bank was intimately familiar, that Williams had advanced some $84,000 of personal funds to finance vehicles of TMC on behalf of PSB, *before* Williams ever began to overdraft his account. [R, II, p. 5]. *See* Appendix D.

Stone's affidavit further states that with respect to interest paid on the money advanced by Williams, PSB deducted $500 monthly as a "service charge" and then applied the remainder to its own benefit as interest income:

> "[t]he Pelican State Bank deducted Five Hundred Dollars ($500.00) each month beginning July 1, 1977 through May 9, 1978 from monthly interest check earned on money advanced by William Archie Williams known as Cash and Pelican State Bank, and listed as a service charge . . . . The balance of September 1977 interest check was applied for the benefit of the Pelican State Bank as shown on the Cash Journal as interest on notes." [R, II, p. 6]. *See* Appendix D.

Thus, PSB was making money on the funds extended by Williams on its behalf without compensating Williams therefor in any form or fashion. Stone's affidavit, therefore, unequivocally shows that Williams was indeed a creditor of PSB as a result of his having advanced large amounts of personal funds to honor PSB's legal obligations. It is also clear that Stone, by his position as cashier of the bank, *must* have known this (aside from the admission to that effect in his post-trial affidavit). Stone, however, *falsely* testified to the contrary at Williams' trial.

Although the District Court did permit Williams himself to give limited testimony about the situation which contradicted Stone's false testimony, Williams' testimony was totally ineffectual to demonstrate the falsity of Stone's testimony to the jury for two reasons: (1) Williams' testimony came out in an incomplete and disjointed fashion, largely because of the District Court's erroneous exclusion of his documentary evidence and expert testimony; and (2) the District Court destroyed whatever weight the jury might have given Williams' testimony by erroneously in-

structing the jury that it could reject Williams' testimony if it found his "keen personal interest" in the outcome of the trial sufficient to affect his testimony. [R, II, pp. 392-393]. The Fifth Circuit in its judgment in the matter at issue concluded with respect to this charge that the instruction had been approved in the Fifth Circuit, citing *United States v. Jones*, 587 F.2d 802, 806 (5th Cir. 1979). *See* Appendix A.

REASONS FOR GRANTING CERTIORARI

I. The District Court's Giving of an Instruction to the Jury That It Could "Reject" the Defendant's Testimony Solely on the Basis That It Felt His Interest in the Outcome of the Action Was "Sufficient to Affect" His "Credibility" Is in Conflict With This Court's Decision in *Reagan v. United States*, 157 U.S. 301 (1895); Presents a Conflict Among the Circuit Courts of Appeals; and Raises a Significant Issue Which Goes to the Heart of a Criminal Defendant's Right to Testify on His Own Behalf, Especially in Light of the Recantation by a Key Government Witness.

A. The District Court's Instruction Is in Conflict With This Court's Decision in *Reagan v. United States*, 157 U.S. 301 (1895).

This Court, in *Reagan v. United States*, 157 U.S. 301 (1895), was faced, in a criminal action, with the question whether it was proper for the trial court to suggest in its instructions to the jury that the defendant had a significant personal interest in the outcome or result of the action.

In upholding the charge given by the trial court in *Reagan v. United States*, this Court clearly recognized that the interest of a defendant in the outcome of the

action is only a factor for the jury to consider in determining the weight, credence and effect to be given to the defendant's testimony. The charge upheld by the Supreme Court in *Reagan* instructed the jury that it "must determine how far [the defendant's testimony] is credible", and that the interest of the defendant in the result of the action "should be considered by the jury in weighing his evidence and in determining how far or to what extent, if at all, it is worthy of credit". *Id.* at 304 (emphasis added).

The cases cited by this Court in *Reagan* similarly involved instructions which pointed out the interest of the defendant as a factor to be considered by the jury when determining the weight and "amount of credibility" to be given to the defendant's testimony. *Id.* at 306-310. *See also, Hicks v. United States,* 150 U.S. 442 (1893).

This Court, however, has never extended a trial judge's right to give a charge such as was given in the case at issue. In its charge to the jury, the trial court in this matter first singled out Williams by telling the jury that Williams had a "keen interest in the outcome of the trial." [R, III, pp. 292-293]. The trial court then went significantly further by charging that the jury was "free to reject [Williams'] testimony" if they felt, without any limitation or reference to degree, that his interest in the outcome of the case "is sufficient to affect the defendant's credibility."

This charge, *per se,* is patently unfair and prejudicial to Williams, is unsupported by authority, and constitutes plain error which affects the petitioner's substantial rights and which undermines his right to due process under the Fifth Amendment of the United States Constitution.

The trial court's charge does not, by its literal terms, even require that the "interest" in fact affect the defendant's credibility, only that it be "sufficient to affect" his credibility. It is virtually inconceivable that a defendant who has a "keen personal interest in the outcome" of a criminal proceeding will be able to select a jury which does not "feel" that such "keen interest" is "sufficient" to "affect" that defendant's credibility in at least some minimal way. As recognized by this Court in *Reagan v. United States*:

> "[t]he fact that he is a defendant does not condemn him as unworthy of belief, but at the same time it creates an interest greater than that of any other witness, and to that extent effects the question of credibility . . . but the interest is to be considered as affecting his credibility." *Reagan v. United States*, 157 U.S. 301, 305-6 (1895).

The trial court's decision conflicts with Reagan (1) because it is tantamount to an instruction to the jury to disregard the defendant's testimony; and (2) because a suggestion to the jury of the interest of a defendant, if proper, must be done only as "a circumstance to be considered in weighing his testimony and determining the credence that shall be given to his story." *Reagan v. United States, supra* at 306.

It is respectfully submitted that the conflict between the charge given by the trial court and this Court's opinion in *Reagan* deserves careful review by this court.

B. The Decision Below Conflicts With the Decisions of Other Circuit Courts of Appeals Which Have Disapproved of Singling Out a Defendant in a Criminal Case When Instructing the Jury As to Credibility.

The Fifth Circuit has allowed an instruction to the jury to the effect that it may consider the defendant's interest in the outcome of the case "in determining the degree of credibility that could be afforded to the defendant's testimony". *See, e.g., Nelson v. United States,* 415 F.2d 483, 487 (5th Cir. 1969), *cert. denied,* 396 U.S. 1060 (1970); *United States v. Jones,* 587 F.2d 802, 806 (5th Cir. 1979); *United States v. Wiggins,* 566 F.2d 944 (5th Cir. 1978), *cert. denied,* 436 U.S. 950 (1978).

In the case at issue, the Fifth Circuit relied upon *United States v. Jones, supra,* in upholding the trial court's denial of the defendant's motion for a new trial. However, the instruction in *Jones* differs from the instruction at issue in that it simply stated that the jury was entitled to take into consideration the fact that the defendant had a "very keen personal interest" in the outcome of the suit. *United States v. Jones,* 587 F.2d at 806.

A number of other circuits have also approved instructions which single out a defendant in weighing the credibility to be given to the defendant's testimony and are in agreement with the essential holdings in the above cited Fifth Circuit cases. *See, e.g., United States v. Hernandez,* 588 F.2d 346, 349, 350 (2nd Cir. 1978); *United States v. Hill,* 470 F.2d 361 (D.C. Cir. 1972); *United States v. Jones,* 459 F.2d 1225 (D.C. Cir. 1972).

Decisions of other circuits, on the other hand, have directly criticized instructions to the jury on credibility in a criminal case which single out the defendant, as being

improper. In *Taylor v. United States*, 390 F.2d 278 (8th Cir. 1968), *cert. denied*, 393 U.S. 869 (1968), the appellant asserted error because the court instructed the jury: "[i]t is for you to remember, you have a perfect right to do so, the very grave interest a defendant has in the case". 390 F.2d at 284. The court expressed its strong disagreement with this type of charge. Mr. Justice Blackmun, then a judge of the United States Court of Appeals for the Eighth Circuit, stated in *Taylor*:

> "[w]e do not hesitate to observe, however, that the continuing and frequent attack on an instruction of this kind indicates that its use leaves defense counsel with a troubled mind. We suspect that this discomfort would be alleviated if the defendant were included by reference in the court's general instructions as to all witnesses. We would prefer that the defendant not be singled out. His interest is obvious to the jury. A general reference, such as 'including the defendant', should suffice." 390 F.2d at 285.[2]

This preference was forcefully articulated in the later Eighth Circuit case of the *United States v. Bear Killer*, 534 F.2d 1253, 1260 (8th Cir. 1976), *cert. denied*, 429 U.S. 846 (1976), wherein the court stated with respect to an instruction singling out the defendant that: "[i]t is difficult to understand, in light of the decisions of this Circuit, why it was given. . . . [T]he continued use of this instruction can cause this Court to declare, as a *per se* rule, that the error in giving the instruction can never be considered

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2. The trial judge in the instant case did not specifically extend the general credibility charge to the petitioner, but rather couched it in terms of each witness. Moreover, the charge singling out Williams did not follow immediately after the general credibility charge, thereby giving more emphasis to the trial court's singling out of Williams. [R. III, pp. 392-393]. *See also, United States v. Hernandez, supra* at 349-350.

harmless." *See also, United States v. Brown,* 453 F.2d 101, 107 (8th Cir. 1971), *cert. denied,* 405 U.S. 978 (1972); *United States v. Long,* 449 F.2d 288, 298-299 (8th Cir. 1971), *cert. denied,* 405 U.S. 974 (1972).

The Seventh Circuit has also expressed its disagreement with a charge singling out a defendant, and has indicated its agreement with the *Taylor* decision. *United States v. Saletko,* 452 F.2d 193, 197-8 (7th Cir. 1971), *cert. denied,* 405 U.S. 1040 (1972). The Seventh Circuit, in *United States v. Reid,* 410 F.2d 1223, 1228 (7th Cir. 1969), reversed the conviction, in part, because of an instruction singling out a defendant which "presented an unbalanced picture to the jury which was, on the special facts of the case, prejudicial error".

The First Circuit has also endorsed the admonition given by Mr. Justice Blackmun in the *Taylor* case. *Carrigan v. United States,* 405 F.2d 1197, 1198 (1st Cir. 1969), *cert. denied,* 396 U.S. 1028 (1970).

While we contend that the charge as given goes beyond any charge which singles out a defendant, and well beyond any charge upheld by this Court or any other circuit court of appeals, including the charge upheld by the Fifth Circuit in *United States v. Jones,* the resolution of the clear conflict among the circuits as discussed above, if decided consistent with *United States v. Taylor,* would necessarily impact directly on the validity of the charge given in the instant case. It is clear that a number of circuits are greatly troubled with the singling out of a criminal defendant, and therefore, these conflicts justify the grant of certiorari to review the judgment below, and to consider the viability of this Court's decision in *Reagan.*

C. The Jury Instruction Singling Out the Defendant, When Underscored by the Key Witness's Recantation, Raises a Significant Issue With Respect to a Trial Court's Right to Comment Upon the Defendant's Credibility After He Has Testified in a Criminal Proceeding, Since the Charge Given by the District Court Goes Well Beyond Any Decision by This Court or by Any Circuit Court of Appeals.

The question whether singling out a criminal defendant in an instruction on credibility is proper has been raised many times in the circuit courts of appeals. See cases cited *supra*. However, the instruction in the case at issue goes well beyond the limitations previously set by this Court and by these circuits to a point where approval of such a charge will significantly undermine the right of a defendant to testify on his own behalf.

Notwithstanding the recantation of Stone, the Fifth Circuit in the instant matter examined testimony by other witnesses in order to conclude that the evidence contained in the affidavit was "cumulative", "nonmaterial" and unlikely to change the result of the trial. However, in view of the District Court's erroneous charge to the jury that it could reject Williams' testimony if it found his keen personal interest in the outcome sufficient to affect his testimony, Williams' testimony was improperly given no credence by the jury, thereby not affording the jury the opportunity to consider Williams' testimony as weighed against the testimony of other witnesses. The charge in question raises a significant issue which this Court should consider, especially when coupled with the fact that Stone's recantation would have lent non-party support to Williams' contentions.

These instructions singling out a defendant which have been upheld by the various circuit courts of appeals,

have invariably pointed out the defendant's interest only as a factor for the jury to consider in making a decision as to what *degree* of credibility to attribute to the defendant's testimony. *See also*, the cases cited by this Court in *Reagan v. United States, supra,* and cases cited, *supra.* Moreover, this Court has expressly recognized the importance of the function of a jury in deciding the question of the credibility of a defendant *absent prejudicial instructions.* As stated in *Quercia v. United States,* 289 U.S. 466, 471 (1933) (emphasis added):

> "[i]t was for the jury to test the credibility of the defendant as a witness, giving his testimony such weight under all the circumstances as they thought it entitled to, as in the instance of other witnesses, *uninfluenced by instructions which might operate to strip him of the competency accorded by the law.*"

No decision could be found which goes as far as the case at issue, which, in effect, allows a jury to *reject* a defendant's testimony simply if it concludes that the defendant's interest in the outcome, to *any* extent or degree, could have affected his credibility. With the instruction as given, the jury could have elected to totally reject the petitioner's testimony if they had found his credibility was affected minutely as to an immaterial fact.

More significantly, when faced with a situation where a number of witnesses have purportedly testified contrary to the defendant, the upholding of this charge not only totally undermines the defendant's right to attempt to present his story to the jury, but has also improperly provided factual support to the Fifth Circuit's claim that the recanted affidavit is "cumulative" and "nonmaterial". The correctness of the trial court's instruction, even assuming the propriety of singling out a defendant, is open to serious question and in the instant case was clearly prejudicial.

Singling the petitioner out improperly and, unfortunately, effectively undermined his defense. Thus, this issue is of sufficient importance to warrant review by this Court.

II. The Failure to Grant a New Trial in the Face of a Post-Trial Affidavit by a Key Government Witness Recanting a Crucial Part of His Trial Testimony, When Considered Along With the Trial Court's Improper Charge and Improper Exclusion of Material Evidence Vital to Petitioner's Defense, Constitutes Reversible Error.

This Court has expressly recognized that a new trial should be granted when a conviction is obtained through testimony of a key government witness whose credibility at trial is subsequently cast in doubt. *Mesarosh v. United States*, 352 U.S. 1, 9 (1956). The reason is that "[t]he dignity of the United States Government will not permit the conviction of any person on tainted testimony." *Id.* at 9. As in *Mesarosh*, the instant case does not present a situation where untruthful statements are made by a government witness subsequent to trial, and are then claimed to be newly discovered evidence affecting the witness' credibility at trial. *Id.* at p. 9. Here, as set out in the Statement of Facts, witness Stone executed a post-trial affidavit in which he clearly recants his trial testimony by admitting that part of his trial testimony concerning whether Williams had made infusions of capital into PSB was false. Stone's testimony at trial to the effect that Williams *had not* made such infusions of capital into PSB was a blow that struck at the very heart of Williams' defense, a defense which, if not completely stilled by Stone's testimony, was finished off by the trial court's exclusion of much of Williams' evidence to the contrary, and the jury charge discussed hereinabove.

Stone's post-trial recantation is tantamount to the post-trial discovery in *Mesarosh* with respect to the credibility of one of the Government witnesses in that case. This Court stated:

> "[B]y his [the Government witness in question] testimony, [he] has poisoned the water in this reservoir [the trial], and the reservoir cannot be cleansed without first draining it of all impurity. . . [This Court has a duty] to see that the waters of justice are not polluted. Pollution having taken place here, the condition should be remedied at the earliest opportunity."

Id. at 14. In *Mesarosh*, the Court went on to grant the petitioners (defendants) a new trial, after having also determined that a remand would serve no purpose, because only a jury could properly decide whether the convictions of the petitioners should be sustained absent the testimony of the discredited Government witness.

The test used by the circuit courts in deciding whether to grant a new trial on the basis of newly discovered evidence when there has been no showing of recantation or false swearing, *see, e.g., United States v. Johnson,* 142 F.2d 588 (7th Cir. 1944), must be distinguished from the test in most cases in which a material witness admits under oath that his testimony was mistaken or false. *See, e.g., Larrison v. United States,* 24 F.2d 82 (7th Cir. 1928); *Batsell v. United States,* 403 F.2d 395 (8th Cir. 1968), *cert. denied,* 393 U.S. 1094 (1969) (general rule for deciding whether to grant a trial based on newly discovered evidence applied in a situation involving recantation by a material witness). With respect to cases involving a recantation, there appear to be two tests in use by the circuit courts for deciding whether to grant a new trial.

First, in *Larrison, supra,* with respect to motions for a new trial brought on the grounds that a witness admitted subsequent to trial that he had testified falsely at trial, the Court said,

> "A new trial should be granted when,
>
> (a) The Court is reasonably well satisfied that the testimony given by a material witness is false.
>
> (b) That without it the jury *might* have reached a different conclusion.
>
> (c) That the party seeking the new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial."

24 F.2d at 87-8 (emphasis original). This test has been applied in numerous subsequent cases. *See, e.g., United States Ex Rel. Rice v. Vincent,* 491 F.2d 1326 (2nd Cir. 1974); *Newman v. United States,* 238 F.2d 861, 862 N. 1 (5th Cir. 1956); *United States v. Flynn,* 130 F. Supp. 412 (D.C. S.D. N.Y. 1955).

The other test is succinctly set forth in *Mastrian v. McManus,* 554 F.2d 813 (8th Cir. 1977), *cert. denied,* 433 U.S. 913 (1977), where the Court said:

> "In federal court, the impact of recanted testimony as a basis for a new trial motion depends both on the credibility of the recanting witness and the materiality of his testimony. Unless the recanted testimony would probably produce an acquittal on retrial, a new trial motion on this ground must be denied (citations omitted)."

Id. at 822-23.

With respect to the *Larrison* test, it has already been clearly established herein that Stone's post-trial affidavit

recanted material portions of his trial testimony. It has also been shown that Stone's false testimony at trial was a surprise to the defense, which had no reason to believe that Stone would deny under oath that Williams had infused capital into PSB. Thus, the *Larrison* test is reduced to the question of whether or not a jury *might* have reached a different verdict had the trial testimony not been "polluted" by Stone's false testimony.

On the other hand, the *McManus* test, after looking at Stone's credibility and the materiality of his testimony, requires the Court to find that the recantation would probably produce an acquittal if the case were to be retried. Petitioner now contends that both the *Larrison* test and the more stringent *McManus* test are met under the unique facts and circumstances of the instant case. While the Petitioner is of the view that the *Mesarosh* case strongly suggests that the *Larrison* test should be applied under the circumstances presented, Petitioner will focus on meeting the requirement of the stricter *McManus* test, as satisfying that test necessarily means that the requirement of the *Larrison* test has been met.

First, the false testimony given by Stone at trial directly impugned the defenses raised by Williams on each of the three counts of the indictment. Under 18 U.S.C. §656, the government is required to allege and prove that the defendant intended to defraud the bank by his conduct. Thus, in defense of Count I of the indictment, Williams sought to show that his prior and contemporaneous conduct of extending his personal funds to cover the bank's obligations was intended to, and did, benefit the bank; that at all times that Williams' account was overdrawn, the funds which he had extended to cover the bank's legal obligations were of a much greater amount; and that it was because Williams was taking care of the

bank's legal obligations that his account became overdrawn. The jury could find from such evidence that Williams lacked the requisite intent to defraud the bank. *See, United States v. Riley,* 550 F.2d 233, 236 (5th Cir. 1977); *United States v. Foshee,* 569 F.2d 401, 403-5 (5th Cir. 1978), *modified (as to facts)* 578 F.2d 629 (5th Cir. 1978).

Thus, the false testimony given by Stone on rebuttal at trial severely undermined Williams' defense on Count I of the indictment by directly contradicting Williams' contention that he lacked any intent to injure or defraud the bank because, at all times that his account was in overdraft status, he had a much larger amount of personal funds extended to cover legal obligations of the bank.

The false testimony given by Stone damaged Williams' defense of Counts II and III of the indictment as severely, if not more severely, as it damaged his defense of Count I. In defense of Counts II and III, Williams sought to show that he had extended large amounts of personal funds to cover legal obligations of PSB; that as a result, he was entitled to $60,000 of proceeds which he received from the sale of TMC; and that had his instructions relating to said proceeds been followed, the checks which are the subjects of Counts II and III would have been covered when presented for payment. Thus, establishment of the fact that he had extended larger amounts of personal funds on behalf of PSB was essential to Williams' defense of Counts II and III.

Ollie Stone severely prejudiced Williams' defense on said Counts by falsely testifying on rebuttal that Williams had not extended large amounts of personal funds to cover legal obligations of the bank, thereby leaving the jury to believe that Williams could not have had a reasonable expectation that the checks were being covered when presented for payment.

Stone's testimony was particularly damaging because he was the bank's cashier and as such would have been (and was) intimately familiar with the bank's accounts and would have executed (and did execute) money orders which Williams contended he had purchased on behalf of PSB (with his personal funds) to send to General Motors to pay for cars shipped to TMC. Stone's false testimony thus very severely undermined the defenses raised by Williams on each of the three counts of the indictment.

Second, the Court should not view Stone's post-trial recantation in a vacuum. *See, United States v. Agurs*, 427 U.S. 97, 113-14 (1976). The recantation must be viewed in light of both the trial court's exclusion of certain evidence offered in Williams' behalf at trial and the credibility charge discussed above.[3] Under the facts of this case, there can be no true doubt that if Stone had informed the jury that Williams had put his own money into

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3. Before the defendant could even begin to put up his defense, the trial court sustained a motion *in limine* which prohibited him from introducing the documentary evidence and expert testimony which would have explained the defendant's relationship to the various entities involved in this case, and shown, thereby, that Williams had extended large amounts of personal funds to cover legal obligations of the Pelican State Bank. Williams, as a result, had *no* opportunity to develop evidence essential to his defense on each of the three counts of the indictment. [SR, I, pp. 2-31; D. Ex. 8-14; 18-22 (all excluded)].

It should be emphasized that the documents and proffered testimony were the *only* evidence presented by Williams which would have corroborated his testimony that he had advanced large amounts of personal funds to General Motors to honor PSB's obligation to finance the automobiles in transit to TMC. All of this evidence was excluded by the trial Court.

In sharp contradistinction, the Government was permitted in rebuttal to present adverse testimony from three bank officers that Williams *had not* advanced such funds. This testimony was not only false, as is shown by Stone's post-trial affidavit and various bank documents, but it severely undermined Williams' defense on each of the three counts of the indictment. *See, Miller v. Poretsky*, 595 F.2d 780, 783, 785 (D.C. Cir. 1978); *United States v. Dwyer*, 539 F.2d 924, 928 (2nd Cir. 1976).

the bank, which money was being used by the bank and was sufficient to cover the checks Williams was accused of writing with intent to defraud the bank, and if Williams had been allowed to introduce his evidence which would have corroborated such testimony by Stone, a properly instructed jury would not reasonably find that Williams intended to injure or defraud anyone, an essential element in proving his guilt under each of the three counts of the indictment. Thus, the recantation is also significant because it constituted material evidence which directly supports Williams' defense.

In the instant case, Stone's affidavit, together with documents and expert testimony proffered by Williams at trial, establishes the falsity of his trial testimony; and there can be no question but that he was a "material witness". Defense counsel was rendered unable to meet the false testimony because the District Court erroneously sustained a motion *in limine*, thereby excluding highly relevant evidence which would have shown the testimony to have been false and foreclosing cross examination of witnesses about the excluded matters, and because the District Court gave an erroneous jury instruction which destroyed whatever weight Williams' testimony might otherwise have been given by the jury. It is plain, therefore, but for said false testimony and the appellant's inability to meet it, the jury might have, and indeed probably would have, reached a different result. The significance of the recantation issue is of sufficient importance to warrant review by this Court.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Fifth Circuit.

Respectfully submitted,

NICKOLAS P. CHILIVIS
POWELL, GOLDSTEIN, FRAZER & MURPHY
35 Broad Street
1100 Citizens and Southern National Bank Building
Atlanta, Georgia 30335
Attorney for Petitioner William Archie Williams

APPENDIX

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
Unit A

No. 80-3969
Summary Calendar

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

William Archie WILLIAMS,
Defendant-Appellant,

Appeal from the United States District Court
for the Western District of Louisiana

(June 22, 1981)

Before GEE, RUBIN and RANDALL, Circuit Judges.

PER CURIAM:

Defendant-Appellant William Archie Williams was convicted on trial by jury of one count of misapplication

of bank funds (18 U.S.C. § 656) and two counts of check kiting (18 U.S.C. § 1014). On March 19, 1981, his conviction was affirmed on appeal. *U.S. v. Williams,* 639 F.2d 1311 (5th Cir. 1981). Pending before this court at the time that Williams' conviction was affirmed was an appeal from the denial of Williams' motion for a new trial based on the ground of newly discovered evidence. On January 13, 1981, an order was entered by this court remanding to district court for a determination of whether the untimely appeal filed by Williams of the denial of his motion for a new trial was the result of excusable neglect. On January 26, 1981, the district court issued an order finding that Williams' untimely filing of his notice of appeal was due to excusable neglect. Therefore, Williams' appeal from the denial of his motion for a new trial is properly before this court for decision.

Williams contends that the district court erred in denying his motion for a new trial under Fed. R. Crim. P. 33, based on newly discovered evidence that Ollie L. Stone, Jr., a cashier at Pelican State Bank, had given false testimony at the trial.

To his motion for a new trial, Williams attached an affidavit of Mr. Stone, signed on Jan. 23, 1980, and in a memorandum accompanying the motion he set forth the following "visual display" of the inconsistencies between the trial testimony and the recanted testimony of Mr. Stone:

TRIAL TESTIMONY	TESTIMONY AFTER RECANTATION
Ollie L. Stone, Jr., testified that to his knowledge the defendant had no savings account at Pelican State Bank; held no certificates of deposit on the Pelicaan State Bank, and that funds belonging to depositors at the bank were used to pay the items herein involved. (page 36, lines 165-167)	In his affidavit the witness stated that he knew the defendant had money in the vault of the Pelican State Bank and that transactions were involved with this money through the bank. (Recanting affidavit paragraph 3, second sentence)
Ollie L. Stone, Jr., testified at the trial that there was a possible loss of interest by the bank since it lost the use of approximately $58,000.00 for a short time due to the return of an item in that amount which had been deposited in defendant's account. (page 55, lines 188-194)	The witness' affidavit states that because the floor plan agreement between Taylor Motor Company and Pelican State Bank had exceeded the legal limit the defendant made advances to the bank out of his personal funds. (Recanting affidavit paragraph 4, first sentence)
Ollie L. Stone, Jr., testified that Pelican State Bank never owed Mr. Williams any amount of money, but that Mr. Williams owed the bank substantial amounts of money. (pages 284-285, lines 47-49)	In the recanting affidavit the witness states that the defendant made cash advances to Pelican State Bank and that from the records of the bank there appeared to be $84,000.00 owed to the defendant by Pelican State Bank. (Recanting affidavit paragraph 4, sentence four)

On July 29, 1980, seven months after Mr. Stone signed this recanting affidavit, he signed a second affidavit for the stated purpose of clarifying his previous affidavit, which the government used in connection with its opposition to Williams' motion for new trial. In the second affidavit, Mr. Stone asserted that he had agreed to sign the first affidavit after Williams had agreed to have it redone with certain changes. Although some changes were made, Mr. Stone stated that he made other changes in order to convey his position and failed to make other changes which he should have made to reflect his views rather than those of Williams. In the second affidavit, Mr. Stone stated that he signed the first affidavit out of a sense of frustration and belief that he could do no more work for his employer until he appeased Williams. He also stated that he did not believe that anything he said in his first affidavit in any way recanted or refuted any testimony he made in the trial of Williams during December 1979.

The district court denied the motion for a new trial, finding that: (1) in view of the circumstances surrounding Stone's signing of the first affidavit, it could not find that the first affidavit constituted a recantation of Stone's trial testimony; (2) even if it were considered to be a recantation to some extent, the court was of the opinion that these contradictory affidavits could not support the granting of a new trial based on newly discovered evidence, since Stone was subjected to heavy cross-examination at trial, and Williams was given every opportunity to develop evidence; and (3) the court had heard all the evidence at appellant's trial and had concluded that a different result would not be reached if a new trial were granted. We affirm.

To obtain a new trial on grounds of new discovered evidence, a defendant must show that: (1) the evidence

was discovered following trial; (2) due diligence was exercised on the part of the movant to discover the new evidence; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) a new trial would probably produce a different result. See U.S. v. Bryant, 563 F.2d 1227, 1231 (5th Cir. 1977), cert. denied, 435 U.S. 972 (1978). Williams has met none of these criteria. Stone was subjected to extensive cross-examination, and the matter of whether the Bank owed Williams any money or whether Williams owed the Bank any money was developed through witnesses and documents. As this court noted on direct appeal, Williams "admitted that he did not have any notes for the loans he had allegedly made to the bank" and "answered evasively when questioned whether the bank's records contained any entries proving his assertion that he was a substantial creditor of the bank." U.S. v. Williams, 639 F.2d at 1316. Stephen Roberts, a certified public accountant, testified that he could not unequivocally identify the source of the funds injected into the Bank, which Williams claimed he paid (id.). P. N. Gallaspy, chairman of the board of the Bank during the period in question, December of 1977 through May of 1978, testified unequivocally on rebuttal that Williams had not been a creditor of the Bank during that period (id.). Ken Smith, a federal bank examiner, testified on rebuttal that he did not discover any evidence that at that time the Bank owed Williams large amounts of money (id.). Finally the government called Jessie Bridges, associated with Taylor Motor Co. (the company for which Williams alleged he extended his personal funds on behalf of the Bank's reputation), who testified that Taylor Motors had owed the Bank a substantial amount of money during this period, but, to the best of his knowledge, Taylor had never been in-

debted to Williams (id.). Motions for a new trial based on recanted testimony of a material witness are viewed with suspicion. U.S. v. Nolte, 440 F.2d 1124, 1128 (5th Cir.), cert. denied, 404 U.S. 862 (1971). In view of the less than unequivocal recantation of Mr. Stone, the circumstances surrounding the signing of his "recanting" affidavit and the trial testimony, the "newly discovered" evidence contained in the affidavits is clearly cumulative and non-material, and unlikely to change the result of the trial. Thus there was no abuse of the sound discretion vested in the district court as to whether to deny or grant a new trial. See U.S. v. Riley, 544 F.2d 237, 240 (5th Cir. 1976), cert. denied, 430 U.S. 923 (1977).

Williams attempts to buttress his argument by stating that the falsity of Mr. Stone's testimony was also established by Bank document proffered at trial but excluded from evidence. This court has already determined on his direct appeal that these items were properly excluded, and thus Williams' reliance on this argument is foreclosed under the doctrine of the "law of the case." United Artists Corporation v. Freeman, 605 F.2d 854, 857 n.5 (5th Cir. 1979).

Finally, Williams contends that the district court totally destroyed whatever weight his own testimony might have had by instructing the jury that it could reject his testimony, if it found his "keen personal interest" in the outcome sufficient to affect his credibility. This instruction has been approved in this circuit. See U.S. v. Jones, 587 F.2d 802, 806 (5th Cir. 1979).

AFFIRMED.

APPENDIX B

(Filed July 10, 1981)

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

October Term, 19

No. 80-3969
Summary Calendar

D.C. Docket No. CR 79 50016
UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

WILLIAM ARCHIE WILLIAMS,
Defendant-Appellant.

Appeal from the United States District Court for the Western District of Louisiana

Before GEE, RUBIN and RANDALL, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was taken under submission by the Court upon the record and briefs on file pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the District Court appealed from, in this cause be, and the same is hereby, affirmed.

JUNE 22, 1981

ISSUED AS MANDATE: JULY 9 1981

APPENDIX C

(Filed November 17, 1980)

MINUTE ENTRY
STAGG, J.
November 17, 1980

CRIMINAL NO. 79-50016-01
SHREVEPORT DIVISION

UNITED STATES OF AMERICA

versus

WILLIAM ARCHIE WILLIAMS

* * *

Defendant's motion for a new trial is DENIED. The court has reviewed the affidavit of Ollie L. Stone Jr., which was submitted in conjunction with defendant's motion, and has considered that affidavit in light of the same witness' second affidavit which was filed with the Government's response. In view of the circumstances surrounding Stone's signing of the first affidavit, this court cannot find that the first affidavit constitutes a recantation of Stone's trial testimony.

Even if the first affidavit were considered to be a recantation to some extent, this court is of the opinion that these contradictory affidavits cannot support the granting of a new trial based on newly discovered evidence. As the Government has argued in its opposition to the motion, Stone was subjected to heavy cross-examination at trial, and the defendant was given every opportunity to develop evidence. Furthermore, this court heard all of the evidence at defendant's trial and concludes that a different result would not be reached if a new trial were granted. For these reasons, defendant's motion must be DENIED.

/s/ (Initial illegible)

APPENDIX D

STATE OF LOUISIANA :
PARISH OF DESOTO :

BEFORE ME, the undersigned Notary Public in and for the above named parish and state, personally came and appeared OLLIE L. STONE, JR., known to me, who, being duly sworn, says:

That the purpose of this affidavit is to clarify the records by documented information in regard to transactions of Pelican State Bank involving William Archie Williams; and further that this affidavit is given of my own free will.

In the trial of the United States of America versus William Archie Williams, I was asked if I knew how much money was advanced by William Archie Williams to the Pelican State Bank, I answered "no". I knew Mr. Williams had money in an envelope in his box in the vault of the Pelican State Bank and transactions were involved with this money through the Pelican State Bank.

As floor plan check No. 8724 shows, advances to the Pelican State Bank by William Archie Williams were because the floor-plan agreement of Taylor Motor Company and the Pelican State Bank had exceeded the legal limit of Fifty Thousand Dollars ($50,000.00) and Pelican State Bank's Two Hundred Thousand Dollars ($200,000.00) participation agreement with the American Bank & Trust Company also had been exceeded, a combination of which makes a total floor plan agreement of Two Hundred Fifty-Thousand Dollars ($250,000.00). There appears to be a note made to the Pelican State Bank from Taylor Motor Company for each car financed by the following:

(1) Pelican State Bank

(2) American Bank & Trust Company

(3) Cash and Pelican State Bank (outside financing as illustrated by check No. 8724.)

For demonstration purposes the transactions of the Taylor Motor Company for the month of September 1977 are as follows:

Taylor Motor Company owed:

Pelican State Bank	$ 51,600.00
American Bank & Trust Company (Reduced from August 1977 $291,819.60 balance)	$150,040.32
Cash and Pelican State Bank (money loaned by Williams)	$84,000.00

There appears to be this amount ($84,000.00) of money owed as indicated by copies of checks drawn on Winnfield Bank & Trust Co.

Illustrated by checks with over floor-plan amount and endorsed by Mr. Williams

Each month, Taylor Motor Company would pay monthly interest by three separate checks, for the month of September, as follows:

Pelican State Bank, No. 8418	$ 430.00
American Bank & Trust Co., No. 8420	$1,253.36
Cash and Pelican State Bank, No. 8419 ($500.00 service charge and interest for outside floor plan)	$1,900.00

To illustrate, a certified copy of the interest check for September 1977 from Taylor Motor Company drawn on Bank of Winnfield and Trust Company is enclosed.

Also, a certified copy of the Pelican State Bank Cash Journal dated September 8, 1977 showing the transactions for this date is attached.

The Pelican State Bank deducted Five Hundred Dollars ($500.00) each month beginning July 1, 1977 through May 9, 1978 from monthly interest check earned on money advanced by William Archie Williams known as Cash and Pelican State Bank, and listed as a service charge, as illustrated by check No. 8724 dated November 9, 1977, because the endorsement on this check is more legible.

The balance of September 1977 interest check was applied for the benefit of the Pelican State bank as shown on the Cash Journal as interest on notes. (To reach the figures as noted on the Pelican State Bank Cash Journal, add check No. 8418 for $430.00 and check No. 8419 for $1,900.00 and deduct the $500.00 service charge, as illustrated, for the $2,330.00 for notes.)

Due to outstanding insufficient checks and the general financial condition of the Taylor Motor Company, the Board of Directors of the Pelican State Bank voted on November 10, 1977 to discontinue their agreement with Taylor Motor Company and General Motors Company of the floor-plan agreement.

From November 10, 1977, no additional money was advanced by Pelican State Bank or American Bank & Trust Company.

It appears additional money from this date was advanced by William Archie Williams for returned drafts on cars that had already been delivered to Taylor Motor Company and payment was demanded by General Motors Company. (To illustrate, bank money order dated Febru-

ary 15, 1978 for $13,671.34 and bank money order dated March 31, 1978 for $9,546.98, both payable to General Motors Company.) Please see attached letters.

/s/ Ollie L. Stone, Jr.
Ollie L. Stone, Jr.

SWORN TO AND SUBSCRIBED BEFORE ME, this 23rd day of January, 1980.

/s/ Joy E. (Illegible)
Notary Public

APPENDIX E

Fifth Amendment to United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CERTIFICATE OF SERVICE

I, Nickolas P. Chilivis, do hereby certify that I have this day served the within and foregoing Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit by causing the mailing of three copies thereof to counsel of record in envelopes properly stamped and addressed as follows:

J. Ransdell Keene, United States Attorney for the Western District of Louisiana
Ansel M. Stroud, III, Assistant U. S. Attorney
D. H. Perkins, Jr., Assistant U. S. Attorney
500 Fanning Street
Shreveport, Louisiana 71101

The Solicitor General
Department of Justice - Suite 5614
9th and Constitution Ave., N.W.
Washington, D.C. 20530

This 18th day of August, 1981.

NICKOLAS P. CHILIVIS
Attorney for Petitioner